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November 15, 2021

BY ECF

Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

MEMO ENDORSED

Re: Mark McKinley v. Detective Crevatas, et al.,
20 Civ. 3606 (KPF)

Your Honor:

I am the Assistant Corporation Counsel assigned to represent defendants the City of New York, New York City Police Department (“NYPD”) Detective Crevatas, Detective Payano, Detective Garcia, Detective Brown, and Undercover Officer UC 376 in the above-referenced matter. Defendants write herein to respectfully renew their request for a stay of all discovery, as well as request an adjournment *sine die* of the Pretrial Conference scheduled for December 2, 2021 (see ECF No. 62), pending the resolution of the Court’s Order to Show Cause (ECF No. 76) and/or defendants’ potential motion for judgment on the pleadings. As indicated in defendants’ November 4, 2021 pre-motion conference application (ECF No. 75), plaintiff’s counsel consents to the requested stay of discovery.

By way of background, on November 4, 2021, defendants’ filed a pre-motion application regarding their anticipated motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. (ECF No. 75). Therein, defendants further requested that the Court stay all discovery in this case pending the resolution of their anticipated motion, on plaintiff’s consent. (Id.). On November 15, 2021, in response to defendants’ pre-motion application, and in light of plaintiff’s failure to file a letter in response thereto, the Court ordered plaintiff to show cause why this case should not be dismissed by December 6, 2021. (ECF No. 76). The Court did not stay discovery in this matter, which is set to close on November 23, 2021, nor did it adjourn the Pretrial Conference currently scheduled for December 2, 2021.

Defendants write herein to respectfully renew their request that discovery be stayed, and further respectfully request that the Pretrial Conference scheduled for December 2, 2021 be adjourned *sine die*. As set forth in defendants’ pre-motion application, a stay is warranted because:

(1) either plaintiff's failure to show cause why this case should not be dismissed or defendants' potential motion, if successful, would result in the dismissal of plaintiff's claims; (2) the parties have not yet begun depositions, and given that the Fourth Amended Complaint ("FAC") names five individual defendants and that there were several non-party eyewitnesses to the incident at issue in this matter, depositions alone may require a significant expenditure of time and resources; and (3) plaintiff will not suffer any unfair prejudice as a result of a brief stay. See Kanowitz v. Broadridge Fin. Solutions Inc., No. 13-CV-649 (DRH) (AKT), 2014 LEXIS 46518 at **15–16 (E.D.N.Y. Mar. 31, 2014) (describing factors to consider in determining whether to stay discovery). Moreover, defendants respectfully submit that the Pretrial Conference currently set for December 2, 2021 would be either obviated by defendants' potential motion and/or otherwise mooted by plaintiff's failure to show cause why this case should not be dismissed. The instant application is also being made out of an abundance of caution, as the parties' deadline to complete discovery in this matter is currently November 23, 2021. (See ECF No. 62).

For the foregoing reasons, defendants respectfully request a stay of all discovery until the Court's Order to Show Cause and/or defendants' potential motion is resolved, as well as an adjournment *sine die* of the Pretrial Conference scheduled for December 2, 2021. Alternatively, defendants respectfully request that the Court stay discovery through the December 6, 2021 deadline provided in the Court's Order to Show Cause.

Defendants thank the Court for its time and attention to this matter.

Respectfully submitted,

Andrew B. Spears /s
Andrew B. Spears
Assistant Corporation Counsel
Special Federal Litigation Division

cc: **VIA ECF**
Edward Sivin, Esq.
Attorney for plaintiff

Application GRANTED. In light of the outstanding Order to Show Cause, discovery in this matter shall be stayed pending further order of the Court. Additionally, the post-fact conference scheduled for December 2, 2021, shall be adjourned *sine die*. The Court intends to lift the stay and re-institute the conference, pending the resolution of the Order to Show Cause and Defendants' contemplated motion for judgment on the pleadings.

The Clerk of Court is directed to terminate the pending motion at docket entry 77.

SO ORDERED.

Date: November 16, 2021
New York, New York

Katherine Polk Failla